

Nuclear Regulatory Commission

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provided within 30 days all such documents, records and reports to the extent they are unclassified and do not reveal a confidential source. The individual may also request the entire investigative file, which will be promptly provided, as permitted by the national security interests and other applicable law;

(e) That unless the individual files with the Director, Office of Administration, a written request for a hearing within 20 days of the individual's receipt of the notification letter or 20 days after receipt of the information provided in response to a request made under paragraph (d) of this section, whichever is later, the Director, Division of Facilities and Security, through the Director, Office of Administration, will submit a recommendation as to the final action to the Deputy Executive Director for Information Services and Administration and Chief Information Officer on the basis of the information in the possession of the NRC;

(f) That if the individual files a written request for a hearing with the Director, Office of Administration, the individual shall file with that request a written answer under oath or affirmation that admits or denies specifically each allegation and each supporting fact contained in the notification letter. A general denial is not sufficient to controvert a specific allegation. If the individual is without knowledge, he or she shall so state and that statement will operate as a denial. The answer must also state any additional facts and information that the individual desires to have considered in explanation or mitigation of allegations in the notification letter. Failure to specifically deny or explain or deny knowledge of any allegation or supporting fact will be deemed an admission that the allegation or fact is true.

(g) That if the individual does not want to exercise his or her right to a hearing, but does want to submit an answer to the allegations in the notification letter, the individual may do so by filing with the Director, Office of Administration, within 20 days of receipt of the notification letter or 20 days after receipt of the information provided in response to a request made under paragraph (d) of this section,

whichever is later, a written answer in accordance with the requirements of paragraph (f) of this section;

(h) That the procedures in §10.24 *et seq.* will apply to any hearing and review.

[64 FR 15642, Apr. 1, 1999]

§ 10.23 Failure of individual to request a hearing.

(a) In the event the individual fails to file a timely written request for a hearing pursuant to §10.22, a recommendation as to the final action to be taken will be made by the Director, Division of Facilities and Security, through the Director, Office of Administration, to the Deputy Executive Director for Information Services and Administration and Chief Information Officer on the basis of the information in the possession of the NRC, including any answer filed by the individual.

(b) The Director, Office of Administration, may for good cause shown, at the request of the individual, extend the time for filing a written request for a hearing or for filing a written answer to the matters contained in the notification letter.

[47 FR 38676, Sept. 2, 1982, as amended at 52 FR 31609, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989; 64 FR 15642, Apr. 1, 1999]

§ 10.24 Procedures for hearing and review.

(a) Upon receipt of a timely filed request for a hearing and answer complying with the requirements set forth in §10.22, the Director, Office of Administration, shall forthwith appoint a Hearing Examiner, and the General Counsel shall forthwith assign an NRC attorney to act as Hearing Counsel. The Director, Office of Administration, shall promptly notify the individual of the identity of the Hearing Examiner and proposed hearing date, which shall be selected with due regard for the convenience of the parties and their representatives.

(b) Within 72 hours of being notified of the identity of the Hearing Examiner, the individual may request that the Hearing Examiner be disqualified for cause by filing with the Director, Office of Administration, a written statement of the individual's reasons for seeking disqualification. The time

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for filing the request may be extended by the Director, Office of Administration, for good cause shown. If the Director, Office of Administration, grants the request the procedures of paragraph (a) of this section and this paragraph shall be followed just as though there had been no prior appointment.

(c) The individual shall have the right to appear at the hearing before the Hearing Examiner, to be represented by counsel or other representative, to introduce documentary or other evidence, and to call, examine, and cross-examine witnesses, subject to the provisions and limitations set forth in this part.

[47 FR 38676, Sept. 2, 1982, as amended at 51 FR 35999, Oct. 8, 1986; 52 FR 31609, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989]

§ 10.25 NRC Hearing Counsel.

(a) Hearing Counsel assigned pursuant to § 10.24 will, before the scheduling of the hearing, review the information in the case and will request the presence of witnesses and the production of documents and other physical evidence relied upon by the Director, Division of Facilities and Security, in making a finding that a question exists regarding the eligibility of the individual for an NRC access authorization and/or an employment clearance in accordance with the provisions of this part. When the presence of a witness and the production of documents and other physical evidence is deemed by the Hearing Counsel to be necessary or desirable for a determination of the issues, the Director, Division of Facilities and Security, will make arrangements for the production of evidence and for witnesses to appear at the hearing by subpoena or otherwise.

(b) Hearing Counsel is authorized to consult directly with individual's counsel or representative or the individual, if the individual is not so represented, for purposes of reaching mutual agreement upon arrangements for expeditious hearing of the case. Such arrangements may include clarification of issues and stipulations with respect to testimony and contents of documents and other physical evidence. Such stipulations when entered into shall be binding upon the individual and the NRC for the purposes of this

part. Prior to any consultation with the individual, the Hearing Counsel shall advise the individual of his or her rights under this part, of his or her right to counsel or other representation, and of the possibility that any statement made by the individual to the Hearing Counsel may be used in subsequent proceedings.

(c) The individual is responsible for producing witnesses in his or her own behalf and/or presenting other evidence before the Hearing Examiner to support the individual's answer and defense to the allegations contained in the notification letter. When requested by the individual, however, the Hearing Counsel may assist the individual to the extent practicable and necessary. The Hearing Counsel may at his or her discretion request the Director, Division of Facilities and Security, to arrange for the issuance of subpoenas for witnesses to attend the hearing in the individual's behalf, or for the production of specific documents or other physical evidence, provided a showing of the necessity for assistance has been made.

[47 FR 38676, Sept. 2, 1982, as amended at 64 FR 15643, Apr. 1, 1999]

§ 10.26 Appointment of Hearing Examiner.

The appointment of a Hearing Examiner, pursuant to § 10.24 of this part, shall be from a list of qualified attorneys possessing the highest degree of integrity, ability, and good judgment. To qualify, an attorney shall have an NRC "Q" access authorization and may be an employee of the NRC, its contractors, agents or licensees. However, no employee or consultant of the NRC shall serve as Hearing Examiner hearing the case of an employee (including a consultant) or applicant for employment with the NRC; nor shall any employee or consultant of an NRC contractor, agent or licensee serve as Hearing Examiner hearing the case of an employee (including a consultant) or an applicant for employment of that contractor, agent, or licensee. No Hearing Examiner shall be selected who has knowledge of the case or of any information relevant to the disposition of